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SOME ECONOMIC EFFECTS OF ARTIST'S FOLLOW-UP RIGHTS*

John Picard Stein

Professors J. W. Nickson and Carl C. Colona in their paper on the "Economic Exploitation of the Visual Artist" ^{THIS is presented} ~~AND THE~~ address themselves to an issue that is poorly understood by most artists, art patrons and even those authors. I am referring to the economic consequences of so-called "follow-up rights", guaranteeing an artist a percentage of any resale receipts received by someone else on one of the artist's paintings. France and Belgium already have such a "droite de suite" allocating 3 percent of the sales price to the painter on paintings resold through dealers or at auctions. Similar measures have been proposed for the U.S., each one differing slightly with respect to the percentage going to the artist (usually 15 percent) or the length of time after the artist's death during which the follow-up right goes to the artist's family (usually 50 years). I will not examine the relative advantages of specific follow-up measures this morning, but rather discuss follow-up rights in general.

My chief point is that follow-up rights cannot be expected to benefit artists and in fact follow-up rights may leave artists worse off.

A commodity is a bundle of rights. In the case of a painting, the bundle includes the right to observe the painting in one's own possession and the right to retain the whole of the proceeds if the painting is resold. The bundle might be smaller. It might consist of the right to observe the painting in one's own possession and the

* Remarks presented before a session on Cultural Economics at the annual convention of the Eastern Economics Association, Bloomsburg, Pa., April 15-17, 1976.

right to keep only 85 percent of the resale price, the residual 15 percent going to the artist.

Adding a follow-up right to sales contract for paintings will reduce the demand, shifting the demand schedule to the left, and increase the supply, shifting the supply schedule to the right. Together, these shifts reduce the initial sales price and may either increase or decrease the quantity of art bought and sold.

If the market works perfectly, then the price decrease should be the price for the right to receive the 15 percent of all resale receipts. Without resale price sharing, the buyer pays a higher price for a painting and receives the right to retain the 15 percent of the resale receipt. With resale price sharing, the seller receives a lower price but retains the right to 15 percent of the resale receipts. If painters and collectors have the same discount rates, risk preferences, and estimates of future price appreciation, then a law requiring resale price sharing could not make artists better off. It would only require them to defer part of their sales receipts. By contrast, I would guess that artists, being poor, are more risk averse than collectors and have higher discount rates. In these cases the artist would prefer certain, current income to uncertain, deferred income and resale price sharing would leave the artist worse off.

Why then do many artists favor follow-up rights? First, artists may be misinformed and unaware that a decrease in initial sales price will offset at least the present value of expected resale receipts. Second, artists who currently use a follow-up rights clause in their

sales contracts may want such clauses to be required by law so that the responsibility for policing them would rest with government rather than the artists. Third, artists might be more optimistic about the price appreciation of their work than are collectors and thus be willing to pay more than collectors for the uncertain stream of future resale receipts. However, if artists tended to be over-optimistic, follow-up rights would enable collectors to take advantage of such narcissism by squeezing out a substantial reduction in initial purchase price in return for giving the artist a follow-up right. Finally, and perhaps most importantly, artists whose works now trade regularly on the "pre-owned" paintings market may be seeking to be paid twice by changing the rules in midgame. On first sale they were paid for the right to all resale income because the follow-up right did not yet exist, and now they pursue a second payment for a part of the same right by seeking to have the follow-up right made effective ex post.

Nickson and Colona go on to argue that a national registration of art works be organized so that follow-up rights can be centrally policed. Such a national registration strikes me as an interesting idea, but I would be wary of its practicality and expense. I can well imagine some avant-garde artist fighting to convince a Washington bureaucrat that his work was indeed art.